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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,924	04/15/2004	Clemens Rickert	09251-US	7349

7590 12/08/2004

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EXAMINER

KOVACS, ARPAD F

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/824,924

Applicant(s)

RICKERT ET AL. 

Examiner

Árpád Fábián Kovács

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/15/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 8-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

in re claim 8, in line 4, the "pivot axis"; is unclear if the horizontal or the vertical pivot axis is claimed.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Leposa et al (DE 3231953 A1).

Leposa et al (DE 3231953 A1) discloses:

In re claims 1-3, 5, 12:

a self-aligning intake auger (9), pivotal at the first end about a substantially vertical axis (ref 12; in re claim 5), wherein the rear end (14) can be mounted in a rear pendulum or swivel bearing (16); also see the translated Abstract, pivotal of the auger shown in fig 2 (at ref 31);

in re claim 4:

as shown in fig 4, the first/forward end of the auger is pivotal around a pivot axis taken at ref 11;

in re claims 1 & 2:

it is noted that in claim 2, the first & second ends are determined,

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however, claim 1, only functionally recites that the drive "arranged to drive"; the auger; while the prior art shows mechanical/hydraulic (or anything known) drive at the second end, the drive is capable of being arranged at either ends of the auger.

it is noted that a functional recitation must be expressed as a "means" for performing the specified function, otherwise the intended use of the device does not differentiate the claimed apparatus from the prior art apparatus satisfying the claimed structural limitations.

in re claims 13-15:

It is noted that the elements recited in view of the rejection of the independent claim 12, in some form would need to be included in the forementioned generic claim, in which case a restriction would apply. For this reason, the claimed subject matter will be revisited only then, if the application elects the subject matter of claims 13-15.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8-9, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leposa et al (DE 3231953 A1).

Although a mechanical/hydraulic drive is shown by the prior art, the drive (ref 17) can be any of the well known drives including but not limited to from a group of: hydraulic, mechanical, electrical, pulley driven and gear drive. All these drives have been well established in the art and well known to pick and choose between them. It is further noted, although as noted above in paragraph 5, this feature is in an intended use statement, as best illustrated by the two prior art cited by applicant, the drives can be placed at either ends on the auger. The ball joint is known as in fig 3-5.

7. Claims 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leposa et al (DE 3231953 A1).

However Leposa does not show a universal joint (while ball joint is inherent in fig 3-5; in re cl. 11) as claimed.

Leposa discloses the claimed device except for a universal joint.

Phares discloses that it is known in the art to provide a universal joint (ref 83).

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Leposa with the teachings of Phares, in order to allow the drive shaft greater flexibility.

***Allowable Subject Matter***

8. Claims 13-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schlueter, Reece et al., Streb, Hubbard et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábíán Kovács whose telephone number is 703-308-5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Árpád Fábián Kovács  
Primary Examiner  
Art Unit 3671

ÁFK